IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 22 OF 1991.

The Commissioner of Income-tax,
Bombay City IV, Bombay ... Applicant.

V/s.

Dr. Beck & Co. (India) Ltd. ... Respondent.

Shri A.N. Kotangale, Senior Counsel i/b K.C. Sidhwa for the applicant.

Shri Arun Sathe for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 13.7.2005

P.C. :

. By this reference under section 256 of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, and having regard to the interpretation of sec. 36(1)(iv) of the Income-tax Act, 1961 and Rules 87 and 88 of the Income Tax Rules 1961, the Tribunal was right in law in holding that the assessee was entitled to a deduction of entire initial contributioin to the Superannuation Fund as a liability in computing the income of the assessee for

the Assessment Year 1981-82?"

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that weighted deduction u/s 35B of the I.T. Act should be allowed to the assessee for the Asst.Year 1981-81 in accordance with the provisions of Rule 6AA and 17 of the Income-tax Rules, 1962, which came into force with effect from 1.8.1981?"

3. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount of Rs. 16,69,769/- representing commission paid by the assessee company would not qualify for weighted deduction under the provisions of section 35B of the Income-tax Act, 1961 for the assessment year 1981-82?"

. Learned counsel for the parties agreed that the first question relating to intepretatiion of section 36(1)(iv) of the Income-tax Act, 1961 and Rules 87 and 88 of the Income-tax Rules, 1962, has already been answered by the this Court in the case of **C.I.T. vs. Dr.Beck and Co.(1999) 239 ITR 561**

and also by the Apex Court in the case of **C.I.T. vs.Sirpur Paper Mills (1999)237 ITR 41(SC)** in favour of the assessee and against the revenue. In that view of the matter, the first question is answered in the affirmative i.e. in favour of the assessee and against the revenue.

. So far as 2nd and 3rd questions are concerned, the issue involved in both the questions has already been answered by the Division Bench of this Court in the case of Dr.Beck & Co. (India) Ltd. (in the case of assessee itself),(1999) 239 ITR 561, wherein the Division Bench was pleased to hold that the assessee could not be entitled to weighted deduction under section 35B on both the counts referred to in the said questions. In this view of the matter, both the said questions are answered in the negative i.e. in favour of the revenue and against the assessee.

. Reference stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**